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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

Federal Communications Commission  
Office of Secretary

Amendment to the Commission's Rules ) WT Docket No. 95-157  
Regarding a Plan for Sharing ) RM-8643  
the Costs of Microwave Relocation )

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To: The Commission

**REPLY TO OPPOSITIONS TO PETITION FOR RECONSIDERATION  
OR, IN THE ALTERNATIVE, FOR RULEMAKING**

AT&T Wireless Services, Inc., GTE Mobilnet, PCS PrimeCo, L.P., Pocket Communications, Inc., Western PCS Corporation, and the Cellular Telecommunications Industry Association (collectively "Petitioners") by their attorneys and pursuant to 47 C.F.R. §§ 1.429 and 1.401, hereby submit their reply to the oppositions of the American Petroleum Institute ("API"), the Association of American Railroads ("AAR"), and the Association of Public-Safety Communications Officials-International, Inc. ("APCO") (collectively "Incumbents")<sup>1/</sup> to the Petition for Reconsideration or, in the Alternative, for Rulemaking ("Petition") filed by Petitioners in the above-captioned proceeding.<sup>2/</sup> Because Petitioners set forth a reasonable proposal that will encourage negotiations between PCS providers and

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<sup>1/</sup> Opposition of the American Petroleum Institute to Certain Petitions for Reconsideration, Clarification and/or Rule Making ("API Opposition"); Opposition of the Association of American Railroads Petition for Reconsideration ("AAR Opposition"); Opposition of the Association of Public-Safety Communications Officials-International Inc., Petitions for Reconsideration ("APCO Opposition").

<sup>2/</sup> See Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, First Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 95-157, RM-8643 (released April 30, 1996) ("Order").

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microwave incumbents without impairing the rights of the latter, the Petition should be granted.

The Petition asks the Commission to clarify that incumbent microwave licensees are required to complete the relocation process and vacate the 2 GHz frequencies by the end of the mandatory period or be converted automatically to secondary status. Contrary to the Incumbents' assertions, this proposed clarification does not constitute a radical departure from the Commission's microwave relocation policy.<sup>3/</sup> Rather, it is entirely consistent with the Commission's desire to provide for both the prompt roll-out of PCS in the 2 GHz band and an equitable relocation of the microwave licensees that currently occupy that spectrum. To accomplish this objective, the Commission established two negotiation periods, one voluntary and the other mandatory, after which time the spectrum allocated for PCS should be fully available for the deployment of PCS systems. While the rules do not anticipate another negotiation period to follow on the heels of mandatory period, this plainly is what the Incumbents expect.

The Incumbents' fears that the establishment of a firm cut-off date for negotiations would endanger the public safety or unfairly disadvantage microwave licensees in the negotiation process are baseless. Microwave incumbents have been on notice since 1992 of the Commission's intention to reallocate 2 GHz spectrum to emerging technology services and, thus, have had ample time to prepare themselves for that eventuality.<sup>4/</sup> AAR's

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<sup>3/</sup> API Opposition at 6; APCO Opposition at 2-3.

<sup>4/</sup> Order at ¶ 66 (citing Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, ET Docket No. 92-9, First Report and Order and Third Notice of Proposed Rulemaking, 7 FCC Rcd 6886 (1992)).

complaint that Petitioners' proposal would force them to vacate their spectrum "after as little as three years" simply underscores that many incumbents have no intention of leaving the band during the term established for that process.<sup>5/</sup> Based on the Commission's aggressive PCS construction schedule and the establishment of only two negotiation periods, Petitioners were under the impression that three years was intended to be the outside date for relocation. In contrast, the Incumbents obviously view their entitlement to the spectrum as indefinite.

The abundant notice of required relocation coupled with three years to negotiate a move to comparable facilities pursuant to stringent FCC guidelines undercuts the Incumbents' claims of potential disruption to the "vital safety uses" of their microwave communications systems.<sup>6/</sup> Petitioners are not proposing immediate conversion of microwave licenses to secondary status. Rather, microwave incumbents have had, and continue to have, more than sufficient time to relocate their operations. Other than the failure of microwave licensees to bargain in good faith during the established negotiation periods, there is absolutely no reason that adoption of Petitioners' proposal would result in disruption to any microwave operations.

Equally specious are the Incumbents' assertions that amending the microwave relocation rules in the manner suggested by Petitioners would shift the balance of negotiating power to the detriment of incumbents. In this regard, APCO argues that by holding out the threat of immediate conversion to secondary status, "PCS licensees could force incumbents

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<sup>5/</sup> AAR Opposition at ii, 9.

<sup>6/</sup> Id. at 8.

during the mandatory period to accept inferior replacement facilities" or "could refuse to offer any replacement facilities at all."<sup>7/</sup>

This contention assumes that PCS licensees would intentionally violate the good faith negotiating mandate and the requirement that microwave licensees be provided with comparable facilities on new spectrum. It also assumes that incumbents would have no recourse to the Commission's enforcement mechanisms in such circumstances. Contrary to these baseless speculations, grant of the Petition would simply encourage microwave licensees to come to the bargaining table with the good faith intention of accepting bona fide offers for comparable facilities. Acceptance of the Incumbents' attempts to put off the inevitable would prevent the timely roll-out of PCS operations, thereby denying consumers access to the full benefits of competition.

If the Commission determines that additional comment is necessary before it acts on this issue, it should grant Petitioners' alternative request for an expedited rulemaking proceeding. As noted in the Petition, parties have had sufficient time to review the Order and the ex parte letter<sup>8/</sup> that first raised this matter, obviating need for anything more than an abbreviated proceeding.

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<sup>7/</sup> APCO Opposition at 2.

<sup>8/</sup> See Letter from AT&T Wireless Services, Inc., BellSouth Personal Mobile Communications, GTE Mobilnet, PCS Primeco, L.P., Western Wireless Corp., DCR Communications, and Pacific Bell Mobile Services to Michele Farquhar, Chief, Wireless Telecommunications Bureau, April 15, 1996 ("April 15 Letter").

## CONCLUSION

For the foregoing reasons, the Commission should grant the Petition by clarifying that microwave incumbents are required either to clear the 2 GHz band by the end of the mandatory period or be automatically converted to secondary status at that time. In the alternative, the Commission should promptly commence a rulemaking proceeding on this issue.

Respectfully submitted,

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### CERTIFICATE OF SERVICE

I, Tanya Butler, do hereby certify that on this 20th day of August, 1996, I caused a copy of the foregoing "Reply to Oppositions to Petition for Reconsideration Or, In The Alternative, For Rulemaking" to be sent by first class mail, postage prepaid, or to be delivered by messenger (\*) to the following:

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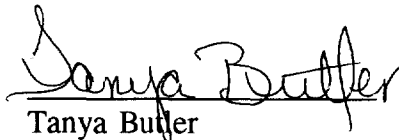
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